No. 82-973

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

IMMIGRATION AND NATURALIZATION SERVICE, *Petitioner*

v.

PREDRAG STEVIC, *Respondent*

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF THE AMICUS

This brief is submitted by the Office of the United Nations High Commissioner for Refugees, as *amicus curiae* in this case, with the consent of the parties.

The Office of the United Nations High Commissioner for Refugees (UNHCR) has been charged by the United Nations General Assembly with the responsibility of providing international protection, under the auspices of the United Nations, to refugees within its mandate and of seeking permanent solutions to the problems of refugees.[1] The Statute of the Office of

[1] U.N. General Assembly Resolution 428(V) 1950; Annex: *Statute of the Office of the United Nations High Commissioner for Refugees*, ¶ 1.

the High Commissioner specifies that the High Commissioner shall provide for the protection of refugees falling under the competence of his Office by, *inter alia*:

> Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto . . .[2]

This supervisory responsibility of the UNHCR is formally recognized in Article II, paragraph 1, of the United Nations Protocol of 1967 relating to the Status of Refugees (1967 Protocol), to which the United States became a party in 1968:

> The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

The present case, concerning as it does the interpretation of statutory provisions deriving from the provisions of the 1951 United Nations Convention relating to the Status of Refugees (1951 Convention), through the 1967 Protocol, presents questions involving essential interests of refugees within the mandate of the High Commissioner. The resolution of this case is likely to affect the interpretation by the United States of its responsibilities under the 1967 Protocol with regard to the determination of refugee status and the application of the principle of *non-refoulement*. The outcome of this case can moreover be expected to influence the manner in which the authorities of other countries apply the refugee definition contained in the 1951 Convention and incorporated by reference in the 1967 Protocol.

For these reasons, the UNHCR respectfully submits this brief in support of the interpretation of the relevant provisions of the 1967 Protocol which was adopted by the Court of Appeals for the Second Circuit in the decision below.

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[2] *Id.* ¶ 8.

INTRODUCTION AND SUMMARY OF ARGUMENT

In this brief, the UNHCR seeks to demonstrate, first, that the legislative histories of the United States' accession to the 1967 Protocol, 19 U.S.T. 6223, 606 U.N.T.S. 268, and of the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, *et seq.*, show that the refugee definition in the 1951 Convention, 189 U.N.T.S. 150, and in the 1967 Protocol has been incorporated without qualification into United States law.

Second, it will be shown that the refugee definition in Article 1 of the 1951 Convention must be interpreted to mean that a person should be recognized as a refugee if he has "good reason" to fear persecution for the stated reasons; that is, if his subjective fear of being persecuted is based upon an objective situation which makes that fear plausible and reasonable under the circumstances. A person may have good reason to fear persecution even though it cannot be established that it is more likely than not that he would in fact be singled out for persecution.

Third, the term "clear probability of persecution" can be taken to mean that an applicant must prove that he would more likely than not be subjected to persecution if returned to his country of origin. The court below was therefore correct in holding that the "clear probability" standard is inconsistent with the requirements of the 1967 Protocol as incorporated into United States law by the Refugee Act of 1980.

I. The legislative history of the United States' accession to the 1967 Protocol shows that the Senate was advised that the United States could comply with its obligations under the 1967 Protocol without amending the existing statutes of the United States. In particular, the Senate was informed that the prohibition in Article 33 of the 1951 Convention against returning a refugee to any territory where his life or freedom would be threatened could be implemented by the Attorney General within the administrative discretion permitted by existing regulations. Nothing in the legislative history of the United States' accession indicates that the Senate made its advice and

consent to accession conditional on the continuation of a previously applied evidentiary standard in the interpretation of the refugee definition. Moreover, the legislative history of the Refugee Act of 1980 clearly shows that Congress intended to conform domestic law with the United States' obligations under the 1967 Protocol and to ensure that United States statutes and regulations would be construed in a manner consistent with the relevant international norms.

II. The UNHCR's interpretation of the term "well-founded fear of being persecuted" is based on the legislative history of the 1951 Convention, the interpretation given to a similar term in the Constitution of the International Refugee Organization (IRO), from which the 1951 Convention definition derives, the consistent practice of the UNHCR in applying the Convention definition both before and after the adoption of the 1967 Protocol, and the plain meaning of the words themselves.

In light of the understanding of the term "refugee" by the drafters of the 1951 Convention and the stated objectives of the international community in adopting this Convention, the UNHCR submits that "well-founded fear of being persecuted" means that, in order for a person to qualify for refugee status, it must be shown that his subjective fear of persecution is based upon objective facts which make that fear plausible and reasonable under the circumstances. In applying this evidentiary standard, due account must be taken of the precarious situation in which applicants for refugee status normally find themselves.

III. To require an applicant for refugee status to establish that he would more likely than not be exposed to persecution would be in contradiction to the recognized need to acknowledge the special difficulties with which such an applicant may be confronted in establishing his case. There may indeed be many situations in which a person could qualify for refugee status even though he would not be in a position to prove in objective terms that persecution may *in fact* take place. Since the "clear probability" standard can be taken to mean that

persecution must be more likely than not, this standard is inconsistent with the refugee definition in the 1951 Convention and the 1967 Protocol, as well as with the Refugee Act of 1980.

The decision of the Court below should, therefore, be affirmed.

ARGUMENT

I. THE LEGISLATIVE HISTORIES OF BOTH THE UNITED STATES' ACCESSION TO THE 1967 PROTOCOL AND OF THE REFUGEE ACT OF 1980 SHOW THAT THE REFUGEE DEFINITION IN THE 1951 CONVENTION AND THE 1967 PROTOCOL HAS BEEN INCORPORATED WITHOUT QUALIFICATION INTO UNITED STATES LAW.

A. Nothing In The Legislative History Of The United States' Accession To The 1967 Protocol Implies That The Senate Intended To Endorse Any Prior Standard Of Proof Which Might Be Inconsistent With The Protocol.

Since 1968, the United States has been a party to the 1967 Protocol, which incorporates Articles 2 through 34 of the 1951 Convention. Both instruments provide for the fair and humane treatment by States Parties of any person who, owing to a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion, is unable or unwilling to return to his country of nationality or his former habitual residence.

The Petitioner asserts that the United States acceded to the 1967 Protocol on the assumption that "such action would not alter or enlarge the substance of our immigration laws." Brief for the Petitioner herein, Immigration and Naturalization Service (hereinafter cited as INS Brief) at 9. Read in context, however, the legislative history shows that the Senate focused its attention first on the admission of refugees and second on areas where possible amendments to United States legislation might be necessary.

As far as the admission of refugees is concerned, the Petitioner, *id.* at 26, refers to remarks in Mr. Lawrence A. Daw-

son's prepared statement, that accession to the 1967 Protocol "does not in any sense commit the Contracting State to enlarge its immigration measures for refugees."[3] This view was reiterated by Mr. Dawson during the hearing before the Senate Foreign Relations Committee when he stated "that there is nothing in this Protocol which implies or puts any pressure on any Contracting State to accept additional refugees as immigrants."[4]

It is clear from the context that these statements relate exclusively to refugee admissions, a matter not addressed in the 1951 Convention and the 1967 Protocol, and they have no bearing on the application of the refugee definition in asylum or deportation proceedings.

When discussing possible conflicts between the 1967 Protocol and the laws of the United States, three areas were mentioned: (i) the United States tax laws; (ii) the United States social security laws; and (iii) the deportation provisions of the Immigration and Nationality Act. The first two of these possible conflicts were resolved by the United States' acceding to the 1967 Protocol with reservations in respect of Articles 24 and 29(1) of the 1951 Convention.[5]

The discussion of the 1967 Protocol's implications for the deportation provision of the Immigration and Nationality Act is the aspect of the Senate hearings which bears the most direct relevance to the issue under consideration in the present case. In referring to the obligations under Articles 32 and 33 of the 1951 Convention, Mr. Dawson pointed out that:

> . . . the asylum concept is set forth in the prohibition under Article 33 of the Convention against the return of a refugee in any manner whatsoever to a country where his life or freedom would be threatened; and the prohibition

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[3] S. Exec. Doc. K, 90th Cong., 2nd Sess. (1968), at 6.

[4] S. Exec. Rep. No. 14, 90th Cong., 2nd Sess. (1968), at 10.

[5] *Id.* at 6.

> under Article 32 against the deportation of a refugee lawfully in the territory of a Contracting State to any country except in cases involving national security or public order. The deportation provisions of the Immigration and Nationality Act *with limited exceptions*, are consistent with this concept. *The Attorney General will be able to administer such provisions in conformity with the Protocol without amendment to the Act.*[6]

The report of the Secretary of State was to the same effect:

> (F)oremost among the rights which the Protocol would guarantee to refugees is the prohibition (under Article 33 of the Convention) against their expulsion or return to any country in which their life or freedom would be threatened. This Article is comparable to Section 243(h) of the Immigration and Nationality Act, . . . and *it can be implemented within the administrative discretion provided by existing regulations.*[7]

As Mr. Dawson stressed during the hearings, the Attorney General could implement the changes required by accession to the 1967 Protocol "without the enactment of any further *legislation*"[8] and "without amendment to the Act."[9]

The legislative history of the United States' accession to the 1967 Protocol thus shows that the Senate did not touch upon the question of the interpretation and application of the refugee definition but focused on areas where accession to the 1967

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[6] *Id.* (emphasis supplied). With respect to deportation, Mr. Dawson and his colleague, Eleanor McDowell, furthermore noted that two grounds of deportation—pertaining to the mentally ill and to public charges—"perhaps could not be . . . construed" in a manner consistent with the 1967 Protocol. S. Exec. Rep. No. 14, 90th Cong., 2nd Sess. (1968), at 8. It was stated that "(t)hese two areas would not be enforced against refugees if the protocol were in force." *Id.*

[7] S. Exec. Doc. K, 90th Cong., 2nd Sess. (1968) III at VIII (emphasis supplied).

[8] S. Exec. Rep. No. 14, 90th Cong., 2nd Sess. (1968) at 8 (emphasis supplied).

[9] *Id.* at 6.

Protocol might possibly require changes in the laws of the United States. In particular, the Senate did not address the question of what standard of proof should be applied in asylum cases. Where changes in the laws of the United States were not considered necessary, it was assumed that United States legislation and practice *could be applied in such a manner as to effectuate the provisions of the 1967 Protocol.* The legislative history contains no indication that the Senate intended to endorse the "clear probability" standard hitherto applied by the lower courts and the Board of Immigration Appeals (BIA) in asylum cases. It suggests, on the contrary, that this practice would need to be modified in so far as it could be inconsistent with the 1967 Protocol.

B. In Passing The Refugee Act Of 1980, Congress Intended To Bring United States Law Into Full Conformity With The 1967 Protocol By Incorporating The Refugee Definition Into Domestic Law Without Any Qualification.

It clearly appears from the Petitioner's brief that Congress in adopting the Refugee Act of 1980[10] intended to conform United States' domestic law with its international obligations under the 1967 Protocol. INS Brief at 36-40.

To accomplish this purpose, Congress first replaced the existing refugee definition which, it was stated, would "finally bring United States law into conformity with the internationally-accepted definition of the term 'refugee' set forth in the 1951 United Nations Refugee Convention and Protocol . . ."[11] Similar statements appear throughout the legislative history of the Act.[12]

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[10] Pub. L. No. 96-212, 94 Stat. 102 *et seq.*

[11] H.R. Rep. No. 96-608, 96th Cong., 1st Sess. (1979) at 9; S. Rep. No. 96-590, 96th Cong., 2nd Sess. (1980) at 19.

[12] *See, e.g., Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 96-781, 96th Cong., 2nd Sess. (1980) at 19; S. Rep. No. 96-256, 96th Cong., 1st Sess. (1979) at 4. *See also* 126

Second, Congress amended Section 243(h) of the Immigration and Nationality Act (INA), which authorized the Attorney General to withhold the deportation of any alien in the United States to any country where, in his opinion, the alien would be subject to persecution on account of race, religion or political opinion. Persecution on account of nationality and membership in a particular social group were added by Congress "for the sake of clarity to conform the language of that section to the Convention."[13] This change was felt to be necessary so that United States statutory law would clearly reflect its legal obligations under international agreements.[14] In addition, Section 243(h) of the INA was transformed from a discretionary form of relief to a mandatory prohibition of *refoulement*, as required by Article 33 of the 1951 Convention.[15] The amended provision was adopted "with the understanding that it is based directly upon the language of the 1967 Protocol and it is in-

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Cong. Rec. H1521 (daily ed. March 4, 1980), remarks of Rep. Holtman: ". . . House definition of the term 'refugee' . . . essentially conforms to that used under the United Nations Convention and Protocol relating to the status of refugees." *Accord* 125 Cong. Rec. H11967 (daily ed. December 13, 1979); *Id.* at H11969 (remarks of Rep. Rodino); *Id.* at H11973 (remarks of Rep. Chisholm); *Id.* at H11979 (remarks of Rep. Esblocki). 126 Cong. Rec. S1753-S1754 (daily ed., February 26, 1980) (statement of Sen. Kennedy). Administration witnesses were equally emphatic. *See The Refugee Act of 1979, Hearings on H.R.2816, Before the Subcommittee on International Operations of the House Committee on Foreign Affairs*, 96th Cong., 1st Sess. (1979) at 71 (remarks of Ms. Doris Meissner, Deputy Associate Attorney General: "What we have done in the Administration bill is simply incorporated the United Nations' definition for 'refugee' . . .")

[13] H.R. Rep. No. 96-608, 96th Cong., 1st Sess. (1979) at 18.

[14] *Id.* Congress also removed or modified the ideological, geographic, and numerical limitations on the conditional entry provisions of former § 203(a)(7) of the INA, 8 U.S.C. § 1153(a)(7).

[15] *Stevic* v. *INS*, 678 F.2d 481, 409 (2d Cir. 1982). This statutory change altered the standard of judicial review of BIA decisions under 243(h). *McMullen* v. *INS*, 658 F.2d 1312 (9th Cir. 1981).

tended that the provision would be construed consistent with the Protocol."[16]

Third, Congress intended to ensure a fair and workable asylum policy which was consistent with the United States' tradition of welcoming the oppressed of other nations and with its obligations under international law. Therefore, it was felt both necessary and desirable that an asylum provision should be included in the legislation.[17]

The discussions concerning the new refugee definition and Section 243(h) evidently have no bearing on the standard of proof, to which no reference was made. They simply reflect the intent of Congress to bring United States statutory law into conformity with the 1967 Protocol and, in particular, to incorporate its refugee definition without any qualification into the domestic law of the United States.

The asylum provision was introduced with the same purpose, and its legislative history similarly provides no support for the Petitioner's position "that passage of the Refugee Act was intended to work no change in the standard by which an alien must prove eligibility for asylum relief." INS Brief at 38. The Petitioner relies on the following statement in the Senate Report:

> As amended by the Committee, the bill establishes an asylum provision in the Immigration and Nationality Act for the first time by improving and clarifying the proce-

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[16] S. Rep. No. 96-590, 96th Cong., 2nd Sess. (1980) at 20.

[17] H.R. Rep. No. 96-608, *supra*, at 17-18. Congress therefore provided, under new Section 207, for the admission into the United States of refugees as defined in the 1967 Protocol from foreign countries, 8 U.S.C. (Supp. V) § 1157, and, under new Section 208 for the extension of asylum to any alien in the United States, regardless of his legal status, 8 U.S.C. (Supp. V) § 1158. As noted by the Petitioner, Congress intended to extend refugee status and asylum under the new law "only to those who qualify under the terms of the United Nations Protocol Relating to the Status of Refugees . . . ." S. Rep. No. 96-256, 96th Cong., 1st Sess. (1979) at 9, quoted in INS Brief at 38-39.

> dures for determining asylum claims filed by aliens who are physically present in the United States. *The substantive standard is not changed, asylum will continue to be granted only to those who qualify under the terms of the United States Protocol Relating to the Status of Refugees, to which the United States acceded in November 1969 [sic].*[18]

The Petitioner also relies on the remarks of Mr. David Martin, Office of the Legal Advisor, Department of State, that "(f)or purposes of asylum, the provisions in this bill do not really change the standards." INS Brief at 39.

In pointing out that the asylum provision would not change the "substantive standard," however, the Senate Report merely emphasizes that asylum would be granted as before only to persons fulfilling certain criteria in the United Nations refugee definition. The report does not, as suggested by the Petitioner, allude to the standard of proof hitherto applied in withholding of deportation cases by the Board of Immigration Appeals, of which Congress may not even have been aware. Indeed, as Mr. David Martin later testified in connection with the burden of proof question in asylum proceedings:

> The Refugee Act . . . never became the occasion for a thorough-going reconsideration of the problems in the asylum adjudication process, largely because these problems really did not become fully apparent until after the Act was in place.[19]

In the legislative history of the Refugee Act of 1980, there is thus no indication that Congress intended the new refugee definition to be applied in the manner in which the Board of Immigration Appeals had previously applied the withholding of deportation provision of the Immigration and Nationality Act. On the contrary, both the House and Senate reports unequivocally reflect Congress' intention that the new refugee

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[18] S. Rep. No. 96-256, 96th Cong., 1st Sess. (1979), quoted in INS Brief at 38-39 (emphasis supplied).

[19] *Asylum Adjudication: Hearings Before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary*, 97th Cong., 1st Sess. (1981) at 132.

definition conform with the definition in the 1967 Protocol and should "be construed consistent with the Protocol".[20] The Refugee Act of 1980 can thus be taken to have incorporated the United Nations' definition of refugee into the domestic law of the United States without any qualification as regards its application.

As shown in Part II below, the 1967 Protocol does not require the asylum-seeker to prove a "clear probability of persecution" but establishes a different, less stringent standard: it must be shown that objective facts make the applicant's fear of being persecuted reasonable under the circumstances, with due regard being given to the difficulty of proof inherent in the asylum-seeker's particularly precarious and vulnerable situation.

II. THE TERM "WELL-FOUNDED FEAR OF BEING PERSECUTED" IN THE 1951 CONVENTION MEANS THAT IN ORDER FOR A PERSON TO QUALIFY FOR REFUGEE STATUS IT MUST BE SHOWN THAT HIS SUBJECTIVE FEAR OF PERSECUTION IS BASED UPON OBJECTIVE FACTS WHICH MAKE THE FEAR REASONABLE UNDER THE CIRCUMSTANCES, BUT NOT NECESSARILY THAT HE WOULD BE MORE LIKELY THAN NOT TO BECOME THE VICTIM OF PERSECUTION.

A. The Deliberations of The Ad-Hoc Committee On Statelessness And Related Problems, Which Developed The Basic Refugee Definition In The 1951 Convention, Demonstrate General Agreement Among The Participating Countries That The Individual's "Fear of Being Persecuted" For Specified Reasons Was The Central Element In That Definition And That Fear Has To Be Considered Well-Founded When A Person Could Show "Good Reason" Why He Feared Persecution.

The term "well-founded fear of being persecuted for reasons of race, religion, nationality . . . or political opinion" originated

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[20] See footnotes 11 and 16.

with the Ad-Hoc Committee on Statelessness and Related Problems, and appears for the first time in the Draft Convention relating to the Status of Refugees adopted by the Ad-Hoc Committee at its first session in January and February 1950.[21]

This Committee, consisting of the representatives of thirteen governments,[22] had been appointed in August 1949 by the United Nations Economic and Social Council (ECOSOC) to consider whether it was desirable to prepare a "revised and consolidated convention relating to the international status of refugees" and stateless persons, and if so to draft such a convention.[23] The subject was a matter of immediate concern because the decision had been made to terminate the activities of the International Refugee Organization (IRO), which was then the agency principally responsible for dealing with refugee problems on the international plane.[24]

When it was convened on January 16, 1950 at Lake Success, New York, the Ad-Hoc Committee had before it a memorandum from the U.N. Secretary-General submitting a preliminary draft convention. This draft did not contain a definition of "refugee" but rather, in Article I, a description of three options for the formulation of such a definition.

At the beginning of the session, draft proposals for Article 1 of the Convention—the refugee definition—were submitted by

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[21] Report of the Ad-Hoc Committee on Statelessness and Related Problems, U.N. Doc. E/1618 and Corr. 1 of 17 February 1950 (hereinafter cited as "*Report*").

[22] Belgium, Brazil, Canada, China, Denmark, France, Israel, Poland, Turkey, Union of Soviet Socialist Republics, United Kingdom, United States, Venezuela. Poland and the USSR did not participate after the first meeting. See *Report*, paras. 4 and 10. The International Labor Organization and the International Refugee Organization were present as observers.

[23] ECOSOC Res. No. 248 B (IX) of 8 August 1949.

[24] *Cf.* U.N. G.A. Res. No. 62(I) of 15 December 1946 and ECOSOC Res. 248 A (IX) of 6 August 1949.

the United Kingdom, France and the United States.[25] While the drafts contained differences concerning the categories of persons to be covered by the convention,[26] they all included persecution or the fear of persecution as the basic element of the refugee definition.

The United Kingdom's proposal, which was originally drafted in terms wide enough to include both refugees and stateless persons, referred to "good reasons" for being unwilling to return to one's country of origin "such as, for example, serious apprehension based on reasonable grounds of . . . persecution."[27]

The original French draft proposal for Article 1 provided that, subject to certain qualifications, the parties to the convention would recognize the refugee status of any person ". . . who has left his country of origin and refuses to return thereto owing to a justifiable fear of persecution. . . ."[28]

The United States proposal applied the term "refugee" to persons defined as such in the various pre-war arrangements and conventions and also to "any person who is and remains outside his country of nationality or former habitual residence because of persecution or fear of persecution on account of race, nationality, religion or political belief," provided such person also belonged to one of certain specified categories.[29] The representative of the United States explained that the point of departure for the U.S. draft proposal had been, subject to certain modifications, the definition in the Constitution of the International Refugee Organization.[30]

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[25] U.N. Docs. E/AC.32/L.2, E/AC.32/L.3, E/AC.32/L.4 and Add.1 (17 January 1950).

[26] Briefly, the United Kingdom and France preferred to rely upon a broad general definition, while the United States proposal, although including a general definition, listed specific categories of refugees to be covered by the Convention.

[27] U.N. Doc. E/AC.32/L.2 (17 January 1950).

[28] U.N. Doc. E/AC.32/L.3 (17 January 1950) at 1 and 2.

[29] U.N. Doc. E/AC.32/L.4 and Add.1.

[30] U.N. Doc. E/AC.32/SR.5, para. 9.

On January 19, 1950, the United Kingdom submitted a revised draft proposal for Article 1 in which the term "well-founded fear of persecution" appears for the first time:

> In this Convention, the expression 'refugee' means, except where otherwise provided, a person who, having left the country of his ordinary residence on account of persecution or well founded fear of persecution, either does not wish to return to that country for good and sufficient reason or is not allowed by the authorities of that country to return there and who is not a national of any other country.[31]

On the same day, the Ad-Hoc Committee appointed a working group composed of the representatives of four countries—France, Israel, the United Kingdom and the United States—to draft a refugee definition that would obtain general approval, using the United States proposal as the basic working document.[32] On January 23, the working group presented a provisional draft which employed, for persons who became refugees as a result of events in Europe after September 3, 1939, and before January 1, 1951, the term "owing to persecution, or a well-founded fear of persecution, for reasons of race, religion, nationality or political opinion".[33] With certain stylistic modifications, but with no disagreement as to the substance, this was accepted as the central element of the definition applicable to post-war refugees in the Draft Convention which was adopted by the Ad-Hoc Committee and transmitted to the Economic and Social Council:

> *Article 1 - Definition of the term "refugee"*
>
> A. For the purpose of this Convention, the term "refugee" shall apply to:
>
> 1. Any person who:
>
> (a) As a result of events in Europe after 3 September 1939 and before 1 January 1951 has well-

[31] U.N. Doc. E/AC.32/L.2/Rev.1 (19 January 1950).

[32] U.N. Doc. E/AC.32/SR.6 at 6-8. The representatives of the International Refugee Organization also participated in the deliberations of the working group.

[33] U.N. Doc. E/AC.32/L.6.

founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion, and

(b) Has left or, owing to such fear, is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, and

(c) Is unable or, owing to such fear, unwilling to avail himself of the protection of the country of his nationality.

This provision shall not include a person who was a member of a German minority in a country outside Germany and who is in Germany. . . .[34]

Following the adoption of the Draft Convention by the Ad-Hoc Committee, the Secretary-General invited governments to comment on it. None of the comments received suggested any disagreement as to the use of the specific term "well-founded fear of persecution" in the refugee definition.[35]

This refugee definition was the subject of extensive further discussions in the Economic and Social Council (ECOSOC), at its 11th Session (August 1950),[36] in the United Nations General Assembly (Fifth Session),[37] and in the Conference of Plenipotentiaries which met in Geneva in July 1951 to consider and adopt the 1951 Convention in its definitive form. However, these discussions, like those in the Ad-Hoc Committee, focused almost exclusively on such questions as date-lines, categories of persons to be included, criteria for exclusion, and the geographical limitation on the persons covered by the Convention. The basic refugee definition adopted by the Ad-Hoc Com-

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[34] U.N. Doc. E/1618 and Corr. 1, Annex I (17 February 1950).

[35] *See* U.N. Doc. E/AC.32/L.40, Memorandum by the Secretary-General of 10 August 1950, and documents cited at n.52 *infra*.

[36] *See* ECOSOC Res. 319 B (XI) of 16 August 1950, and U.N. Doc. A/1396, *Draft Convention relating to the Status of Refugees: Note by the Secretary-General* (26 September 1950).

[37] *See* U.N. G.A. Res. 429(V) of 14 December 1950 and U.N. Doc. A/1682, *Report of the Third Committee* (12 December 1950).

mittee, and in particular the reference to a "well-founded fear of being persecuted" for specific reasons, was not questioned, and after undergoing additional stylistic changes emerged substantially unaltered, for present purposes, in the 1951 Convention.[38]

In its report to ECOSOC, the Ad-Hoc Committee provided a rather extensive set of comments on the provisions of the Draft Convention.[39] With regard to the element of the refugee definition which is of concern in the present case, the Committee's comment was as follows:

> The expression 'well-founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion' means that a person has either been actually a victim of persecution or can show *good reason* why he fears persecution. . .[40] (emphasis supplied).

Since the formulation adopted by the Committee elicited general approval and was henceforth included without debate in virtually all subsequent draft definitions,[41] the *travaux préparatoires* to the 1951 Convention contain no further discussion of its meaning. The comment of the Ad-Hoc Committee remains the final statement by the framers of the 1951 Convention interpreting the term "well-founded fear of being persecuted."

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[38] The same basic definition figures in the Statute of the Office of the UNHCR, U.N. G.A. Res. 428 (V) of 14 December 1950, Annex, paras. 6(A)(ii) and 6(B).

[39] *Report*, U.N. Doc. E/1618, Annex II. The report of the Ad-Hoc Committee, including the Draft Convention and the explanatory comments, together with the comments of Governments, was transmitted by ECOSOC to the U.N. General Assembly. *See* ECOSOC Res. 319 B(IX), *supra*.

[40] *Report*, U.N. Doc. E/1618 at 39.

[41] *See, e.g.*, U.N. Doc. E/L.82 (ECOSOC) (France: amendment to the draft convention relating to the status of refugees) (29 July 1950) and U.N. G.A. Docs. A/C.3/L.114, A/C.3/L.115, A/C.3/L.125, A/C.3/L.130 and A/C.3-L.131 Rev.1 (2 November - 1 December 1950) - (Various countries proposed definitions of "refugee") (reprinted in 5 UNGAOR), Annex (Agenda Item 32) 16-20 (1950).

B. The Term "Well-Founded Fear Of Being Persecuted" In The 1951 Convention Must Be Read In Light Of The Interpretation Given To The Term "Fear, Based On Reasonable Grounds Of Persecution" In The Constitution Of The International Refugee Organization (IRO), From Which It Was Derived, As Requiring That An Applicant Be Able To Show Plausible Reason For Fearing Persecution.

The comments of the Ad-Hoc Committee on the Draft Convention also include the following "general observation":

> In drafting this convention the Committee gave careful consideration to the provisions of previous international agreements. It sought to retain as many of them as possible in order to assure that the new consolidated convention should afford *at least as much protection* to refugees as had been provided by previous agreements. . . .[42] (emphasis supplied).

It has already been noted[43] that one of these "previous international agreements", the Constitution of the International Refugee Organization, had served as the point of departure for the refugee definition in the U.S. draft proposal. Under the IRO Constitution, the determination of whether a refugee or displaced person was of concern to the Organization involved an evaluation of the validity of his objections to returning to his country of origin. The term "well-founded fear of persecution" in the first drafts of the 1951 Convention derives from one of the three "valid objections" listed in the IRO Constitution:

> . . . . The following shall be considered as valid objections: (1) Persecution, or fear, based on reasonable grounds of persecution because of race, religion, nationality or political opinion, provided these opinions are not in conflict with the principles of the United Nations, as laid down in the Preamble of the Charter of the United Nations. . . . .[44]

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[42] *Report*, U.N. Doc. E/1618 at 37.

[43] *Supra* page 14 and n.30.

[44] Constitution of the International Refugee Organization, United Nations Treaty Series No. 283, Vol. 18, at 3, Annex I, Part I, Section C(I)(a)(i).

The parallel between this language and that used in the U.S. draft proposal[45] would be obvious even without the U.S. delegate's statement that the IRO Constitution had been the "point of departure" for his proposal.[46] The link between this "valid objection" in the IRO Constitution and the definition of "refugee" in the draft proposals submitted to the Ad-Hoc Committee is also clear as regards the French and British proposals. The term used in the official French version of the IRO constitution as the equivalent of "fear, based on reasonable grounds of persecution" is "*crainte fondée de persécution*." This is precisely the phrase used in the draft proposal submitted by the representative of France to the Ad-Hoc Committee, and which was translated from the original French on that occasion as "justifiable fear of persecution". The original United Kingdom proposal to the Ad-Hoc Committee[47] had also used a term, "serious apprehension based on reasonable grounds. . . of persecution", very close to the IRO terminology. Finally, the term used in the revised United Kingdom proposal (and eventually adopted by the Committee), "well-founded fear", is so close to the French "*crainte fondée*" as to appear to be a retranslation. Thus it seems evident that the members of the Ad-Hoc Committee were willing to adopt, for the basic refugee definition in the Draft Convention, an expression which was in effect a rephrasing of the term used in the IRO Constitution.

The close connection between the terms "fear, based on reasonable grounds of persecution" in the IRO Constitution and "well-founded fear of being persecuted" in the 1951 Convention is significant for an understanding of the latter term inasmuch as the meaning of the earlier phrase had been clearly established through the eligibility decisions made by the IRO.

The *Manual for Eligibility Officers* published by the IRO includes the following comments on the meaning of the term

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[45] U.N. Doc. E/AC.32/L.4, *supra*, at 5.

[46] U.N. Doc. E/AC.32/SR.5, at para. 9.

[47] U.N. Doc. E/AC.32/L.3 (17 January 1950).

"persecution or fear based on reasonable grounds of persecution":

> As regards objections derived from 'persecution or fear, based on reasonable grounds, of persecution. . .', it is neither incumbent upon nor possible for the Organization to give its own independent and objective view about the conditions at present prevailing in some of the countries of origin of the Displaced Persons. Fear of persecution is to be regarded as a valid objection whenever an applicant can make plausible that owing to political convictions or to his race, he is afraid of discrimination, or persecution, on returning home. Reasonable grounds are to be understood as meaning that the applicant can give a plausible and coherent account of why he fears persecution. Since fear is a subjective feeling the Eligibility Officer cannot refuse to consider the objection as valid when it is plausible. . . .[48]

Although the IRO Eligibility Manual was prepared for use by the organization's eligibility officers rather than by government officials, it was based on eligibility decisions of which concerned Governments were well aware.[49] The representatives of the United Kingdom on the Ad-Hoc Committee referred explicitly to the IRO eligibility practice as having built up "a body of interpretive *(sic)* decisions" and considered that "the U.S. draft proposal was intended to be interpreted in the light of these precedents."[50]

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[48] IRO *Manual for Eligibility Officers* at 24. The Manual was circulated to member Governments of IRO on a confidential basis in February 1950 (see n. 49, *infra*). Since it is not in general circulation, excerpts of the relevant paragraphs are attached to this brief as Appendix I.

[49] The IRO Review Board submitted reports of its activities to the IRO General Council, in which the member Governments sat. *See e.g.* IRO Document GC/103, Report of the Chairman of the Eligibility Review Board (21 September 1949), which refers to the "more liberal view" taken by the Board concerning applicants' failure to provide documentary proof, and the practice of according "the benefit of the doubt" to applicants. The IRO Eligibility Manual itself was circulated to Governments in February 1950 and was the subject of some discussion by government representatives at the IRO General Council Fifth Session in March 1950 (IRO General Council, Fifth Session, Summary Records (GC/SR/64, 69, Annex 70).

[50] U.N. Doc. E/AC.32/SR.6 at 3.

The U.S. delegate for his part referred to the established meaning of terminology in the IRO Constitution used in the U.S. proposal and stated that the definition of "neo-refugees" (i.e., those included in the general post-war definition) had "already appeared in the IRO Constitution where its meaning was quite clear. It would have to have an identical meaning in the Convention."[31]

The records of the deliberations of the Ad-Hoc Committee thus demonstrate that the drafters of the refugee definition in the 1951 Convention were fully aware of the close connection between that definition and the one used in the IRO Constitution.[32] The 1951 Convention's definition of "refugee," of course, stands on its own, and the commentary of the Ad-Hoc Committee does not mention the "valid objections" in the IRO Constitution. Nevertheless, the obvious links between the two definitions and the explicit references during the Ad Hoc Committee's discussions to the interpretative precedents created under the IRO show the context in which the 1951 Convention definition was written and in which it must be read.

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[31] U.N. Doc. E/AC.32/SR.5 at 2-5. The U.S. delegate to the Fifth Session of the IRO General Council in March 1950, who also represented the United States in the Conference of Plenipotentiaries which completed the 1951 Convention, made a similar statement defending the use of the IRO terminology in the Draft Convention:

> But there is no question about what was meant. It was clearly understood that those who had fled as a result of persecution or fear therefore, or entertaining fears thereof, in their countries of origin, had valid reasons for rejecting repatriation.

IRO General Council, Fifth Session, Summary Record GC/SR/70, Annex at 9.

[32] The representatives of France and Italy even expressed the views that the Draft Convention definition was too similar to the provisions of the IRO Constitution and in following the IRO definition too closely it was unduly restrictive. Consequently, both countries pleaded for a broader definition (see U.N. Doc. E/1703/Corr. 1, E/1703/Add. 2-7, and U.N. Doc. E/AC.32/L. 40 (Memorandum by the Secretary-General) of 10 August 1950).

Given the conceptual framework in which they were working, if the drafters of the 1951 Convention had intended to introduce a stricter test of refugee status under the new instrument, there would necessarily have been some mention of such an intention in the *travaux préparatoires*. These however contain no suggestion that the standard of eligibility under the 1951 Convention definition was to be narrower than that which prevailed under the IRO.[54] On the contrary, the expressed intention of the Ad-Hoc Committee "to provide at least as much protection to refugees" as previous international instruments,[54] shows that the definition in the 1951 Convention is to be interpreted in a manner similar to that adopted for the IRO Constitution, *i.e.*, as requiring the applicant to give a plausible and coherent account of why he fears persecution.[55]

C. In Evaluating A Claim To Refugee Status Due Account Should Be Taken Of The Difficulty Of Proof Inherent In The Special Situation In Which An Applicant For Refugee Status Normally Finds Himself.

In the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, September 1979) atten-

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[54] Indeed, the Ad-Hoc Committee's gloss of "well-founded fear of being the victim of persecution" as meaning that a person "can show good reason to fear persecution" serves to emphasize the similarity between the two standards by (a) repeating the subjective element ("fear") and (b) using a term—"good reason"—which is not obviously distinguishable from "reasonable grounds".

[54] *Report*, U.N. Doc. E/1618, *supra*, at 37. See page 18 *supra*.

[55] For a description of the application of the IRO definition during this period, *see* L.W. Holborn, *The International Refugee Organization, Its History and Work—1946 to 1952* (London 1956) at 210:

> A more liberal interpretation of "valid objections" and the granting of the benefit of the doubt was practiced with a degree of understanding acquired by experience . . . Although the Constitution was not altered, it became apparent, from statements made during the sessions of the General Council, that member governments were developing a wider concept of *bona fide* refugee than that which had prevailed in the beginning. The Board therefore endeavoured to apply leniency to the widest extent possible.

tion is drawn to the fact that an applicant for refugee status is normally in a particularly vulnerable situation which may expose him to serious difficulties in submitting his case to the authorities (¶ 190).

While it is a general legal principal that the burden of proof lies on the person submitting a claim, an applicant for refugee status may often not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence in support of all his statements will be the exception rather than the rule (¶ 196). In view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself, the requirements of evidence should therefore not be too strictly applied (¶ 197, see also ¶¶ 203 and 204).

The need to facilitate the task of applicants for refugee status in presenting their cases is also recognized in the practice and in court decisions of States Parties to the 1951 Convention and/or the 1967 Protocol. Two examples which may be mentioned here relate to Canada and the Federal Republic of Germany.

In Canada, where decisions on refugee status are taken by the Minister of Employment and Immigration upon recommendation of a Refugee Status Advisory Committee, the Minister in 1982 announced new guidelines[56] aimed at assisting the members of the Advisory Committee to meet both the legal requirements of Canada's legislation and the "spirit" of its international commitment to refugees. These guidelines particularly underline the importance of giving applicants for refugee status the benefit of the doubt.[57] The Minister, in introducing the guidelines, pointed out:

> Henceforth, the Committee is to be governed in its deliberations by two overriding presumptions: first, the appli-

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[56] "New Refugee Status Advisory Committee Guidelines on Refugee Definition and Assessment of Credibility" of 20 February 1982.

[57] See paras. 3 and 15. See also para. 4 which states that the refugee definition looking, as it does, to the future "is concerned with possibilities and probabilities rather than with certainties."

> cant is presumed to be telling the truth unless there is clear evidence to the contrary, and second, the benefit of the doubt must always be resolved in favour of the applicant. This pertains both to the application of the criteria as well as to the assessment of credibility.[58]

In applying the refugee definition, the courts of the Federal Republic of Germany have also acknowledged the difficulty of proving a "well-founded fear of persecution," and have stated

> that asylum-seekers as concerns proof often find themselves in a certain emergency situation typical of asylum cases ('sachtypischer Beweisnotstand'). This is particularly true for circumstances relevant to their asylum claim which take place outside the host country . . .[59]

Moreover, it has been accepted as a general principle in the asylum practice of the Federal Republic of Germany that the applicant need not "prove" his statements. Instead, as a rule, it is sufficient that the facts on which his fear of being persecuted is based, appear to be credible ("Glaubhaftmachung genügt").[60, 61]

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[58] *See* Notes for an Address by the Honorable Lloyd Axworthy, Minister of Employment and Immigration, Canada, to the National Symposium on Refugee Determination, Toronto (20 February 1982) at 13.

[59] Federal Administrative Court, decisions of 29 November 1977—BVerwG I C 33.71—II.2.b; of 27 February 1962—BVerwG I C 183.59—II; of 27 September 1962, BVerwG I C 145.60 at 6.

[60] Federal Administrative Court, decision of 29 November 1977, *supra*; Administrative Court Ansbach, decision of 2 May 1973—No. 3877—II/73.

[61] The principles set out above are furthermore applied in Belgium where the Minister of Foreign Affairs has delegated his authority to determine refugee status to the UNHCR. Also in Algeria, Australia, Canada, France, Italy, Morocco and a number of other countries, UNHCR participates in various forms in the procedures for determining refugee status (*see* Note on Procedures for the Determination of Refugee Status under International Instruments, U.N. Doc. A/AC.96/INF.153/Nov.3, 7 September 1981), and expresses its views, which are normally accepted in accordance with the principles in its Handbook.

III. ANY INTERPRETATION OF THE TERM "WELL-FOUNDED FEAR OF PERSECUTION" WHICH REQUIRES A SHOWING THAT THE APPLICANT IS MORE LIKELY THAN NOT TO BECOME THE VICTIM OF PERSECUTION OR WHICH DOES NOT TAKE DUE ACCOUNT OF THE DIFFICULTY OF PROOF INHERENT IN THE SPECIAL SITUATION IN WHICH AN APPLICANT FOR REFUGEE STATUS NORMALLY FINDS HIMSELF IS INCONSISTENT WITH THE INTERNATIONAL STANDARD ADOPTED BY CONGRESS.

1. To require the showing of a "clear probability of persecution" as the basis for a determination of refugee status, INS Brief at 25, could lead to results which would not be in conformity with the 1951 Convention and the 1967 Protocol.

The term "clear probability," as employed in various areas of the law, including statutory interpretation, *Utah Power and Light Co.* v. *Pfost*, 286 U.S. 165 (1932); criminal law, *United States* v. *Singleton*, 532 F.2d 199 (2d Cir 1976); *Government of the Virgin Islands* v. *Gereau*, 502 F.2d 914 (3d Cir 1974), *cert. denied* 424 U.S. 917 (1976); antitrust, *United States* v. *Phillips Petroleum Co.*, 367 F. Supp. 1226 (C.D. Cal. 1973), *reh. denied* 419 U.S. 886 (1974); torts, *Davis* v. *St. Louis Southwestern Ry. Co.*, 106 F. Supp. 547 (W.D. La. 1952); and of course, preliminary injunctive relief, *Virginia Petroleum Jobbers Ass'n.* v. *FPC*, 259 F.2d 921 (D.C. Cir. 1958), is generally taken to mean that the fact in question must be more than probably true, *i.e.*, more likely than not or established by the preponderance of the evidence. However, to require of an applicant for refugee status or for withholding of deportation to prove that persecution is "more likely than not" would result in a standard more stringent than the term "well-founded fear" as that phrase is used in the 1951 Convention. Moreover, the "clear probability" standard fails to take into account the subjective term "fear" which is a fundamental element of the refugee definition in the 1951 Convention and the 1967 Protocol.

According to the explanation adopted by the drafters, the term "well-founded fear of being persecuted" in Article 1 of the 1951 Convention means that an applicant for refugee status must be able to show good reason why he fears persecution.[82] Under this definition, therefore, the objective circumstances must be evaluated with reference to an applicant's subjective fear of persecution in order to determine whether there is good reason for that fear. In other words, objective facts are relevant not to prove some particular degree of probability of persecution, but rather to establish whether or not the applicant's fear of being persecuted is justified and reasonable under the circumstances. To ignore the element of fear and to require an applicant to show that he would most probably be persecuted is to apply a definition of "refugee" which is not contained in or implied by the 1951 Convention or the 1967 Protocol, and which does not correctly reflect the obligations of a State Party under either of these instruments.

In using the term "well-founded fear of being persecuted," the framers of the 1951 Convention adopted a definition which corresponds to the practical realities of the refugee situation[83] and reflects the state of uncertainty and anxiety that often precipitates a refugee's decision to flee. *Fear*, rather than a certainty or "clear probability," of persecution is what makes a refugee unwilling to return to his country of origin, and "good reason" for that fear, rather than proof of a particular degree of probability of being persecuted, may be all that a refugee can show in support of his claim.

It would be inconsistent with the ordinary meaning of the words and contrary to human experience to assert that fear is not well-founded unless it is based upon a more than even chance that the event feared would actually come to pass. One

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[82] *See* pages 17-18, *supra*. *Report*, U.N. Doc. E/1618, Annex II, *supra*, at 39.

[83] "The phrase . . . expresses what was then considered to be the essential characteristic of a refugee." L. W. Holborn, *Refugees, A Problem of Our Times* 94 (1975).

authority on refugee law has proposed the following illustration of this idea:

> . . . Let us for example presume that it is known that in the applicant's country of origin every tenth adult male person is either put to death or sent to some remote "labour camp" or that people are arrested and detained for an indefinite period on the slightest suspicion of political non-conformity. In such a case it would be only too apparent that anyone who has managed to escape from the country in question will have a "well-founded fear of being persecuted" upon his eventual return. It cannot—and should not—be required that an applicant shall prove that the police have already knocked on his door.[64]

While it appears from the Petitioner's brief that the "clear probability" standard in practice has been applied with some flexibility, it is apparent from some of the examples cited that the difference between a "clear probability" of persecution and a "well-founded fear of persecution" are by no means negligible. On the contrary, this difference is sufficiently great as to create a serious risk that the 1967 Protocol may not be complied with in those cases where the applicant is required to discharge an unduly high burden of proof. For example, one of the forms of evidence that would substantiate "clear probability" of persecution, according to the Petitioner, is "evidence of persecution of all or virtually all members of a group or class to which the alien belonged . . .".[65] Clearly, an applicant might have a well-founded fear of being persecuted long before "all or virtually all" of the members of his group had actually become the victims of persecution.

Because of the particular difficulties which persons who have been compelled to flee their countries of origin may have in producing evidence,[66] the imposition of a more stringent

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[64] A. Grahl-Madsen, 1 *The Status of Refugees in International Law* 180 (Leyden, 1966).

[65] INS Brief at 9, 23 and notes 25 and 32.

[66] The refugee's difficulty in producing evidence was acknowledged sympathetically by the Board of Immigration Appeals in *In re Sihasdale*, 11 I.&N.Dec. 759, 762 (BIA, 1966), *cited in* INS Brief at 24-25.

standard than "well-founded fear" could result in the exclusion from refugee status of genuine refugees. While a refugee is normally able to present good reasons for fearing persecution in his country of origin, it is often unrealistic to expect him to demonstrate and prove the degree of probability of a hypothetical future event.

2. Traditionally, in United States law and practice, the standard of proof in legal proceedings has been adjusted to balance the interests of the state and the consequences to the individual of factual error. *In Re Winship*, 397 U.S. 358, 379 (1970). As Justice Harlan noted in *Winship*:

> [A]s the standard of proof affects the comparative frequency of . . . erroneous outcomes, the choice of the standard to be applied in a particular kind of litigation should, in a rational world, reflect an assessment of the comparative disutility of each.

Thus, in procedures for determining refugee status or withholding of deportation, the standard of proof should adequately reflect the potentially frightful consequences for the applicant of an erroneous determination as well as the difficulty he may have in proving them.

In summary, the "clear probability" standard should be disapproved[67] since it could lead to results which would not be consistent with the international standard accepted by the United States when it acceded to the 1967 Protocol and incorporated that standard into the Refugee Act of 1980. An act of Congress, moreover, "ought never to be construed to violate the law of nations if any other possible construction remains." *Murray* v. *Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804). *Accord*, *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21-22 (1962).

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[67] The UNHCR expresses no opinion on the merits on remand of Mr. Stevic's application for withholding of deportation.

CONCLUSION

For the foregoing reasons, the Office of the United Nations High Commissioner for Refugees would respectfully urge the Court to affirm the holding of the Court of Appeals that it would not be consistent with the 1967 Protocol as incorporated into United States law by the Refugee Act of 1980, to require applicants for refugee status to prove a clear probability of persecution.

The decision below should be affirmed on these grounds.

Respectfully submitted,

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August 29, 1983

APPENDIX I

From the International Refugee Organization, *Manual for Eligibility Officers:*

Chapter II, ¶ 3:

> *Documents and other evidence.* It will be seen from the above that positive statements made by an applicant should where reasonably possible be supported by documentary evidence. If the applicant has no documents, then he should make an attempt to obtain them; if he has done so or if it is impossible to do so, and if his story is otherwise credible, he should be given the benefit of the doubt. The amount and type of evidence required in any particular case must be determined by the Eligibility Officer concerned; a sufficiently plausible story may be adequate, though some plausible stories, such as the burning of documents in the great air raids on Dresden, are sufficiently common to ring untrue. Therefore supporting evidence should be obtained where possible. Not only the applicant's history but also the reason for absence of the documents should be plausible.

Chapter IV, ¶ 19:

> As regards objections derived from "persecution or fear, based on reasonable grounds, of persecution. . .", it is neither incumbent upon nor possible for the Organization to give its own independent and objective view about the conditions at present prevailing in some of the countries of origin of the Displaced Persons. Fear of persecution is to be regarded as a valid objection whenever an applicant can make plausible that owing to his religious or political convictions or to his race, he is afraid of discrimination, or persecution, on returning home. Reasonable grounds are to be understood as meaning that the applicant can give a plausible and coherent account of why he fears persecution. Since fear is a subjective feeling the Eligibility Officer cannot refuse to consider the objection as valid when it is plausible. As regards fear of persecution because of political opinions, the subsequent reference to the principles of the Preamble of the Charter of the United Nations is to be understood as ruling out any person whose fear of persecution is on account of his Nazi or Fascist convictions

or of his belief in similar regimes associated with Nazism during the war.

N.B. All citations omitted.